IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO. 538 OF 2005
IN
SECOND APPEAL NO. 281 OF 2005

Office Notes, Office Memoranda of of Coram, appearances, Court's orders and Registrar's orders : Court's or Judge's orders

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Mr. A.S. Khandeparkar for the applicants.

Mr. G.R. Rege with Ms. Leena Sawant for the respondents 1A to 1D and 2.

CORAM: P.V. KAKADE, J.

DATED: 5TH AUGUST, 2005

P.C.:

1. Heard learned counsel for both parties. Perused the entire record.

2. This is an application for stay of the execution of the impugned order dated 18.12.2004 passed by the District Court, Sindhudurga in Regular Civil Appeal No. 125 of 2002.

3. The appeal is admitted and substantial questions of law are also settled mainly regarding the house property of the defendants in land of Survey No. 123 Hiss No.20.

4. Ad-interim relief was granted to the effect that parties shall maintain status-quo pending hearing of this application. In this regard it is submitted on behalf of the respondents that there is categorical finding recorded by the lower appellate Court to the effect that the suit property is in exclusive possession of the respondents and, therefore, there is no question of granting any stay to the execution of the lower Court's order. On the other hand, it was submitted on behalf of the applicants that the Trial Court had recorded finding to the effect that the present applicants were in possession of the suit property, however, that finding was reversed by the lower appellate Court holding that the possession of the suit property was that of the respondents.

5. In this regard, on perusal of the record, it is amply clear that the house property exclusively owned by the applicants is located in the Survey No.

123 Hissa No.20 and under such

circumstances, blanket stay, in my considered view, cannot be granted and the proper course would be to maintain status-quo as on today with regard to the said property.

6. Hence, the application is allowed. Parties are directed to maintain status-quo with regard to the suit property. It is clarified that the lower appellate Court has recorded its finding to the effect that the respondent is in possession of the suit land, but the evidence on record, prima facie shows that the applicants' house property is in the said suit land and considering that aspect, the order of status-quo shall be effective pending the appeal. The applicants shall have right of access to their house property pending the appeal.

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